

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAUN C. O'BRIEN,	§
	§
Defendant Below-	§ No. 394, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0712016547
Plaintiff Below-	§
Appellee.	§

Submitted: January 2, 2009

Decided: February 12, 2009

Before **HOLLAND, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 12th day of February 2009, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On April 22, 2008, the defendant-appellant, Sean O'Brien (O'Brien), pled guilty to one count of second degree unlawful sexual contact. The Superior Court sentenced O'Brien to two years at Level V imprisonment to be followed by one year of probation. This is O'Brien's direct appeal.

(2) O'Brien's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). O'Brien's counsel asserts that, based upon

a complete and careful examination of the record, there are no arguably appealable issues. By letter, O'Brien's attorney informed him of the provisions of Rule 26(c) and provided O'Brien with a copy of the motion to withdraw and the accompanying brief. O'Brien also was informed of his right to supplement his attorney's presentation. O'Brien has not raised any issues for this Court's consideration. The State has responded to the position taken by O'Brien's counsel and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.*

(4) This Court has reviewed the record carefully and has concluded that O'Brien's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that O'Brien's counsel has made a

* *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

conscientious effort to examine the record and the law and has properly determined that O'Brien could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice